

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.21112 OF 2006

ORDER:

The petitioner is a licensee in respect of a TCS shop No.2 of Makthal village, which is valid up to 30.9.2007. This writ petition is filed aggrieved by the order dated 14.6.2006 passed by the 1st respondent - Prohibition & Excise Superintendent, Gadwal, Mahaboobnagar, in exercise of the powers under Section 31(1) of the A.P. Excise Act, 1968 (for short "the Act"), thereby suspending the petitioner's licence with immediate effect, pending enquiry.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader for Prohibition & Excise, appearing for the respondents.

A perusal of the impugned order dated 14.6.2006 shows that on 24.5.2006 the Prohibition & Excise Superintendent (STF) and Excise Inspector (STF), along with staff and mediators surprised the toddy shop of the petitioner, and having found that the toddy available in the shop is adulterated with chloral hydrate, registered a case under Section 37(a) of the Act. The officials produced the case papers and the property before the 1st Class Magistrate, Narayanpet with a request to send one of the samples to the Government Chemical Examiner for Prohibition & Excise, Hyderabad, for analysis and report and having *prima facie* found that the petitioner had intentionally involved in adulteration of toddy with chloral hydrate, which is injurious to public health and thereby contravened Rule 5 of the A.P. Excise (Tapping of Trees and Toddy Shops Special Conditions of Licenses) Rules, 1969 and Rule 11 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969, ordered suspension of the licence with immediate effect, pending enquiry, in public interest as a precautionary and temporary measure to prevent sale of adulterated toddy.

The said order is questioned in this writ petition

contending *inter alia*, that the version of the respondents with regard to collection of samples from his toddy shop in his absence is incorrect. It is claimed that the person found in the toddy shop by name Bheemamma has nothing to do with the sale of toddy in the petitioner's shop and that the entire version of the respondent as to the inspection of the shop is concocted and invented for the purpose of implicating the petitioner in the alleged offence. It is also alleged that the excise officials threatened and compelled the said Bheemamma to confess that she was selling toddy on behalf of the petitioner.

At the outset, it is to be noted that the impugned order of suspension was passed pending enquiry into the alleged sale of adulterated toddy in the petitioner's shop. The impugned order shows that the samples were drawn from the shop in question under a *panchanama* and a case was registered on the very same day with the Station House Officer, Narayanpet and the samples were also produced in the Court of the Judicial First Class Magistrate, Narayanpet.

Whether the said allegation against the petitioner is established, or not is a matter for enquiry to be conducted by the 1st respondent following due process of law. Needless to mention that the petitioner would be given an opportunity to put forth his version in the said enquiry and final order would be passed only after considering the version of the petitioner.

The plea of the petitioner that no inspection was conducted by the respondent-officials and that he was falsely implicated in the alleged offence are all disputed questions of fact which are the subject matter of enquiry to be conducted by the 1st respondent. It is neither proper nor possible for this Court to express any opinion on such disputed questions of fact at this stage. Admittedly, the 1st respondent is the competent authority to exercise the powers under Section 31 of the Act. Since the impugned order cannot be held to be either without jurisdiction or in violation of the statutory provisions, the interference by

this Court under Article 226 of the Constitution of India at this stage is not warranted.

However, the learned counsel for the petitioner contended that as per the proviso to Section 31(1) of the Act, it is mandatory to give an opportunity to the person concerned to make his representation before passing even an order of suspension pending enquiry. In support of his submission, the learned counsel has relied upon the decisions of this Court in **S. Venkat Reddy v. The Prohibition & Excise Superintendent, Visakhapatnam**^[1] and **K. Srinivasa Reddy v. Superintendent, Prohibition & Excise**^[2]. Both the said decisions are not applicable to the case on hand, since, admittedly, the impugned order is only an order of suspension pending enquiry, but not a final order of suspension as a measure of punishment. As held by a Full Bench of this Court in **Tappers Co-operative Society, Maddur v. Superintendent of Excise, Mahaboobnagar**^[3], the licence issued under the Act can be kept under suspension, pending enquiry and such order of suspension pending enquiry need not be preceded by any notice.

For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

(G. ROHINI, J.)

12th October, 2006.

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WRIT PETITION No.21112 OF 2006

12th October, 2006.

Between:

K. Narender Goud.

.. Petitioner.

And

The Prohibition & Excise Superintendent,

Gadwal, Mahaboobnagar district and another. Respondents. ..

[\[1\]](#) 1997(3) APLJ 110 (HC);
[\[2\]](#) 2002(1) ALT 108 (DB);
[\[3\]](#) 1984(2) APLJ 1 (FB).